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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI**

JOSEPH R. TOMELLERI,  
Plaintiff,  
v.  
BASS ON-LINE, INC.,  
Defendant.

No.  
**COMPLAINT  
DEMAND FOR JURY TRIAL**

Plaintiff Joseph R. Tomelleri, by through his counsel of record, and for his complaint against Defendant Bass On-Line, Inc., states as follows:

**GENERAL NATURE OF THE CASE**

1. This case involves Defendant's copyright infringement of at least six (6) fish illustrations created and owned by Joseph Tomelleri. Defendant used the illustrations to advertise and promote its online forum that sells freshwater professional fishing guides across the United States.

**JURISDICTION AND VENUE**

2. This claim is brought pursuant to 17 U.S.C. § 101, et seq.

1           3.     This Court has federal question jurisdiction pursuant to 28 U.S.C. §§  
2     1331 and 1338(a) because this case arises under the copyright laws of the United  
3     States. (17 U.S.C. § 101 et seq.).

4           4.     This Court has personal jurisdiction over Defendant under Missouri's  
5     long-arm statute R.S.Mo. § 506.500 for actions including but not limited to  
6     transacting business in the State of Missouri, which occurs via the URL  
7     <https://bassonline.com/> (the "Website") that allows potential customers to purchase  
8     and schedule guided fishing trips with the fishing guides Defendant refers and/or  
9     contracts with in Missouri.

10          6.     Venue is proper in this judicial district pursuant to 28 U.S.C. §  
11     1391(b)(1) because Defendant is a corporation, and venue is proper in any venue in  
12     which the Court can exercise personal jurisdiction.

### 13                                 **PARTIES**

14          7.     Plaintiff is an adult individual and a resident of the State of Kansas.

15          8.     Defendant is a Florida Profit Corporation.

16          9.     Defendant may be served via its registered agent, Todd B. Kersey, at  
17     1000 NW 48<sup>th</sup> Street, Ft. Lauderdale, FL 33309.

### 18                                 **TOMELLERI'S BACKGROUND AND WORKS**

19          10.    Plaintiff Joseph Tomelleri is an artist and a trained biologist who has  
20     spent most of his working life collecting, studying, and illustrating North American  
21     fish species. He is one of the world's best fresh water fish illustrators.

22          11.    Over a 35-year career, Mr. Tomelleri has created over 1,300 hand drawn  
23     illustrations of fish in various life cycles.

24          12.    Mr. Tomelleri's illustrative process involves his expertise gained from  
25     many years of education, his observations of fish in the wild and obtaining and  
26     preserving specimens.

27          13.    Mr. Tomelleri hand draws his illustrations.

14. He incorporates his own expression of color patterns, fin arrangements and other characteristics he believes most significant for a particular fish species in a particular life cycle phase.

15. His illustrations have been published in numerous scientific studies, journals, books, magazines, and fish identification guides.

16. Mr. Tomelleri is the sole owner and proprietor of all rights, titles, and interest in, and to, the copyrights for the illustrations at issue in this case (the “Illustrations”).

17. Joseph Tomelleri is and always has been the exclusive owner of the Illustrations.

18. Each of the Illustrations is covered by a copyright registration owned by Mr. Tomelleri.

19. The following is a table containing the corresponding registration information for each of Mr. Tomelleri’s Illustrations at issue in this case:

No.	Illustration	Reg. #	Reg. Date
1	Rock Bass	VA 1 799485	05/26/2011
2	Walleye	VA 1 799485	05/26/2011
3	Pumpkinseed	TX 3 082429	05/02/1991
4	Guadalupe Bass	TX 3 082429	05/02/1991
5	Lake Trout	VA 1 163619	11/05/2002
6	Bluegill	VA 1 673790	05/06/2009

### **DEFENDANT’S INFRINGING CONDUCT**

20. Defendant is in the freshwater guided fishing trip business.

21. In order to advertise and promote its business, and sell merchandise, Defendant maintains a website at the URL <https://bassonline.com/> (the “Website”).

22. Plaintiff discovered that Defendant, without authorization, reproduced and displayed the Illustrations or their derivatives on the Website.

1           23. The Illustrations used on the Website were used to inform customers of  
2 the kinds of fish that could be caught when purchasing a guided fishing trip, where  
3 the various fish were located, and how to fish them.

4           24. Specifically, Defendant used the Illustrations or their derivatives to  
5 promote their services offering to connect its customers to the fishing guides it  
6 employs to conduct its business.

7           25. Defendant derived revenue from the services sold on the Website with  
8 the infringing use of the Illustrations.

9                           **COUNT I - COPYRIGHT INFRINGEMENT**

10   **(17 U.S.C. § 501)**

11           26. Plaintiff restates the allegations contained in paragraphs 1-25 as if fully  
12 set forth herein.

13           27. Plaintiff has valid copyrights and copyright registrations for the  
14 Illustrations.

15           28. Defendant has infringed Plaintiff's copyrights in his Illustrations by  
16 preparing derivative works based upon the Illustrations.

17           29. Defendant has infringed Plaintiff's copyrights in his Illustrations by  
18 reproducing and publicly displaying unauthorized copies of the Illustrations and/or  
19 derivatives thereof on the Website.

20           30. Defendant has infringed Plaintiff's copyright in his Illustrations by  
21 distributing the Illustrations to the public via its Website.

22           31. To the extent that Defendant does not acknowledge copying the  
23 Illustrations, Defendant had access to the Illustrations and the images used by  
24 Defendant are strikingly similar to the Illustrations.

25           32. As a result of Defendant's above-described acts of copyright  
26 infringement, Plaintiff has sustained damages including lost revenue in an amount  
27 not yet ascertained and profits that should be disgorged to Plaintiff.  
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- a. Under 17 U.S.C. § 502, grant temporary and final injunctions on such terms as it deems reasonable to prevent or restrain infringement of Plaintiff's copyright.
- b. Under 17 U.S.C. § 503, order the impounding and ultimately destruction, on such terms as it may deem reasonable, of any records or material involved in Defendant's copyright infringement.
- c. Under 17 U.S.C. § 504, award Plaintiff's actual damages and any additional profits of Defendant, or, if Plaintiff so elects before judgment is entered, award statutory damages.
- d. Under 17 U.S.C. § 505, award costs to Plaintiff;
- e. Under 17 U.S.C. § 505, as the prevailing party in a Copyright lawsuit, award to Plaintiff reasonable attorneys' fees.
- f. Awarding Plaintiff all available pre-judgment and post-judgment interest on all amounts of any judgment; and
- g. Grant to Plaintiff such further relief as may be equitable and proper.

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

/s/ Steven H. Mustoe

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STEVEN H. MUSTOE